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Dear Margaret,

Tackling Gas Theft

ScottishPower would like to thank Ofgem for the opportunity to respond to the above consultation which describes new supply licence obligations and three industry proposals to improve the detection and prevention of theft.

We agree with Ofgem that theft of gas poses a real risk to consumers and the network; that theft of gas currently costs all customers money, and that where gas is stolen it is not used efficiently. To this end we have been an active member of the Gas Forum group which produced the "NRPS Workgroup Report to Ofgem" (2011), and responded to UNC Modifications 0277 and 0346, as quoted by Ofgem in their consultation.

We support the broad aim of the licence conditions put forward but are concerned as we believe that some aspects go beyond what is appropriate or what we believe Ofgem's intentions are.

ScottishPower supports the principle of the National Revenue Protection Service (NRPS) and the sharing of information relating to theft across the industry. Of the proposals suggested by the industry, we believe that this will deliver the largest improvement to the detection and prevention of theft. We feel however that any solution must be commensurate to the scale of the problem and suppliers who have already have established revenue protection mechanisms in place should not be forced to invest unnecessarily. For the avoidance of doubt, we do not support the Supplier Energy Theft Scheme (SETS) or Enhanced SETS proposals.

We think that some of the consumer protection proposals may go too far. In particular, while we may well wish to fit a prepayment meter in cases where the occupier is unlikely to re-offend, there may be other circumstances where this is pointless and the PPM itself would be likely to be interfered with. Sadly, this may on occasion happen with customers who are also classed as vulnerable. We have therefore suggested repositioning the safeguards in relation to disconnection as taking reasonable steps to find an alternative remedy that would effectively and safely remedy the position.

We have answered the specific questions asked by Ofgem as part of the consultation in an annex to this letter.

I hope you find our comments useful and should you wish to discuss anything within this response please contact me to discuss.

Yours sincerely

David McCrone
Commercial Analyst
Scottish Power

Annex 1 – Response to consultation questions

Please note that where SETS is used in this response it refers to SETS and Enhanced SETS unless specified otherwise.

CHAPTER: Two

Question 1: Do you agree with our proposals to introduce new gas supply licence obligations in relation to theft?

We generally agree with Ofgem's intentions to introduce new licence conditions to improve the detection and prevention of theft of gas but have some concerns over the licence conditions as drafted.

Question 2: Do you agree that our drafting proposals set out in Appendix 3 meet the policy intent described in this chapter?

We believe that certain aspects of the licence conditions go beyond Ofgem's intentions or what is appropriate and introduce a number of areas where there is a risk of replication and dual governance.

We have made a number of comments relating to specific parts of the licence conditions in Annex 2.

Question 3: Do you consider that our proposal for gas suppliers to make reasonable efforts not to disconnect vulnerable customers should apply throughout the year or be restricted to the winter months?

This should be repositioned as making reasonable efforts to find other options that would effectively and safely remedy the matter without the need for disconnection. Where those efforts are not successful, we must retain the right to disconnect at any time. There needs to be recognition that theft of gas is a crime and we should not be required to facilitate its continued commission. There can also be safety issues, for example in the event of persistent but inexpert use of meter by-pass apparatus, especially where the customer lives in part of a larger residential building. A framework must therefore be established that balances the protection of vulnerable customers with the interests of suppliers and other customers.

Question 4: Do you consider that gas suppliers should be required to offer vulnerable customers and customers that would have genuine difficulty paying, a wide range of methods for the repayment of charges associated with gas theft as an alternative to disconnection?

Any such obligation must be subject to the arrangements being effective in remedying the matter (i.e. paying for the stolen gas and preventing future theft). It is in any event in the interests of suppliers to use a range of possible methods to retrieve revenue. The proposal of alternative payment methods does not however address the possibility that a customer may re-offend.

Question 5: Do you consider that Ofgem should include a licence requirement on all suppliers to establish a code of practice on, among other things, theft investigations and the detailed arrangements for compliance with our proposed consumer protection measures?

A code of practice would ensure a consistent approach from all parties but we do not believe that a separate licence requirement would be required. There is work ongoing under the auspices of SPAA to establish a code of practice and this will provide sufficient governance without the need for a new licence obligation. We acknowledge that this does not currently cover I&C Suppliers who are not acceded to SPAA but note the intention of Ofgem to consult on this in the near future. Were I&C Suppliers not acceded to SPAA in

some form, and following the code of practice, a second code would be required with the risk of dual governance.

We believe that there is a substantial part of the draft licence conditions which is mirrored in the proposed code of practice being developed under SPAA and would not support any proposal which would result in any replication or dual governance.

Question 6: Do you agree that our proposed new gas supply licence should be introduced as soon as reasonably practical?

We agree that the proposed new gas supply licence conditions should be introduced and amended as necessary in the light of this consultation as soon as reasonably practicable. It should be noted though that all three industry proposals would require time to establish the processes and supporting contracts required and we would dispute the claim under SETS that it could be implemented to an effective degree immediately. While the appointment of a System Administrator and Auditor could happen in tandem with the scheme, it is reasonable to expect that parties' existing revenue protection activity will be at differing levels of maturity. This would result in time being required to establish the practises required to support the new scheme.

CHAPTER: Four

Question 7: Have we correctly assessed the main impacts in the accompanying IA? Are there additional, material impacts that we should also consider?

We believe that the prevalence of theft is not uniform across the UK market and so setting an arbitrary target (as in SETS) is not appropriate. This is crucial when assessing the viability of the SETS and Enhanced SETS schemes so we would ask that Ofgem consider this factor. We suggest that this should include studying the prevalence of theft across geographical locations and market sectors to fully understand the impact of this.

Question 8: Do you agree with the assumptions that we have made and the outcome of our analysis in Appendix 2 of the accompanying IA?

The volume of theft occurring noted in the IA is based upon responses to a questionnaire published by Ofgem (December 2010). We would question the level of revenue protection activity that this suggests is being undertaken by suppliers. There is a substantial volume of work completed by suppliers that may not be considered as "revenue protection" activity but which would still allow a supplier to detect theft was occurring (for example; cyclic meter readings, statutory meter inspections).

We believe that any solution should be proportionate to the scale of the problem and that suppliers who already carry out substantial revenue protection activity should not need to invest unnecessarily. We expand on how this can be avoided in our answer to Question 10 below.

Question 9: Which, if any, of the three proposals to increase theft detection should be implemented and why?

ScottishPower believe that of the three proposals to increase theft detection, the NRPS should be implemented. The NRPS offers the greatest potential for the detection and prevention of theft and increasing current industry performance in this matter. For the avoidance of doubt, ScottishPower does not support SETS or Enhanced SETS. We set out our arguments for and against these proposals below.

NRPS

The NRPS will detect suspected cases of theft based upon a risk based methodology that is applied consistently across the market irrespective of market sector or geographical

location. This will ensure that the intent of the licence conditions is met regardless of supplier. A consistent approach is also the most efficient and cost effective way of meeting the licence obligations and will mitigate any risk to consumer confidence by suppliers having differing approaches to theft.

The provision of core and commercial services by the NRPS allows suppliers to fulfil their obligations while still providing the ability for parties to make their own commercial arrangements if they wish to do so. This is especially relevant for smaller suppliers who are unable to obtain the economies of scale that large suppliers can manage but still require to meet their obligations under the new licence conditions. The lack of such services being readily available, or the necessity to source them all commercially, may be viewed as a barrier to entry by potential market entrants.

The pooling of industry data will also ensure that theft is detected quicker and we believe that the NRPS proposal promotes data sharing in respect of theft, more so than any other proposal under consideration. Under alternative proposals, suppliers may be disincentivised to pass on suspicions of theft where it is not occurring on at sites registered to them. Under the NRPS, no such disincentive will exist and it follows that theft can be detected and stopped sooner. NRPS therefore also has benefits in relation to safety, as it does not have any perverse incentives not to report theft, such as those seen under the SETs scheme.

The data sharing and safety benefits from the NRPS scheme are key to ScottishPower's support for NRPS over the other proposals.

SETS / Enhanced SETS

The proposer of SETS describes the schemes as ones which “reward those who do most to reduce theft”¹. We do not believe this statement to be accurate and in fact SETS penalises suppliers rather than incentivises. While a supplier can, and would, be expected to do what they can to deter and prevent theft from occurring, it does not seem appropriate that they are penalised for the conscious decision of customers to commit an offence. UNC modifications 277, 346, and the “Enhanced” SETS models are based around the assumption that theft is spread uniformly across all market sectors, suppliers, and geography. Industry data provided by xoserve as part of the MOD 0277 workgroup and the joint ERA/ENA report² published in 2006 confirmed that there are certain geographical areas where theft is more prevalent. While we believe that theft occurs across all market sectors, the AUGE³ also noted comments from industry parties which suggested that less cases of theft were observed by those suppliers focussing solely on the Large Supply Point (LSP) market and/or a particular market sector. If an assumption is made that theft is uniform across market sectors and geography, then it follows that some suppliers will be assigned targets that are unobtainable as the level of theft is simply not manifest in that section of the market, e.g. suppliers with a rural customer base or with smart meters. These niche suppliers are often new or smaller market participants and the introduction of such an incentive scheme could therefore deter new participants from entering the market, as they will be expected to participate in a scheme with unachievable and unrealistic objectives.

By way of example - taking a supplier's fulfilment of the proposed obligations to the extreme, they may choose to increase their efforts in revenue protection to such an extent that they visit every supply point within their portfolio on a fortnightly basis. However if they did not find any additional cases of theft, they would be penalised by failing to meet their target under SETS. This seems inequitable with the proposer's intention that SETS will “reward those who do most”. Conversely, a party who does not invest further in RPU

activities may come across multiple linked cases of theft by chance but which causes it to meet their target and be rewarded.

The SETS proposals suggest that the value of the scheme would be between £10.062m and £12.062m. This is calculated from the proposer's statement in MOD0277 that they spend on £4.417m to fund a "satisfactory performance" and prorated using their market share. This would appear to be contradicted by comments to the AUGE where the proposer acknowledges that while they are effective at managing theft and make year on year improvements, remain only partially successful at the detection of theft⁴. Although we have no means of verifying these figures or the efficiency of the process employed by the proposer, if one assumes that the proposer does operate their revenue protection activity efficiently, this would suggest that these costs are at the lower end of what would be required under SETS. We believe that it should be a fundamental principle that the costs associated with any scheme, and under SETS the penalties for not meeting a target, should be proportionate to the issue. Where costs are excessive, these could ultimately be passed on to customers who have taken gas legitimately and/or act as a disincentive to new market entrants.

It should be noted also that the SETS schemes do not mandate a party to meet the target set for them, as if a party fails then the scheme dictates that they will incur a financial penalty for not meeting the target. We believe that this is wholly ineffective at addressing issue of ensuring appropriate theft detection. In effect a supplier may review the cost of the SETs scheme in relation to the cost of additional revenue protection activity and choose to only do the minimum required under the licence to avoid the penalty. We do not believe that this meets the intent of Ofgem's reasons for focusing on theft and would be detrimental to the industry as a whole.

Detection and prevention of theft

The proposed licence conditions set out an explicit requirement on suppliers to detect and prevent theft. It should therefore be considered which of the proposals will meet both of these requirements.

SETS states that it encourages the detection of theft through a financial incentive. This has two potential drawbacks. Firstly, parties may have a perverse incentive to investigate cases of theft where there may be none occurring. This was highlighted in the development of MOD 0277 where workgroup discussion indicated that there were differing opinions of what constituted a theft. The SETS proposal does not define this so may result in different approaches from different parties. This is not to the benefit of customers and may damage public perception of the industry and how it manages suspicions of theft. It is important to ensure that where theft is suspected and investigated that it is done in a consistent manner to a clear set of cross industry guidelines – there are serious reputational issues for the industry as a whole if this process goes wrong. We would suggest that the proposal is therefore not sufficiently developed and would benefit from further work. This is especially relevant for the Enhanced SETS proposals which has not been raised through the UNC modification process. There is a risk that if such a modification was implemented, further proposals would be require to address any additional issues (e.g. as has been seen under the AUGE process).

Secondly, if a party increases their revenue protection activity and meets their targets on annual basis, they will stand to gain financially at the expense of those which do not act. There is no commercial incentive on that supplier however to proactively prevent theft from occurring across its portfolio in the first instance. The supplier could then continue to allow theft to occur, detect it as part of its revenue protection activity, and meet its requirements under the SETS scheme.

A further drawback of a financial incentive/penalty scheme is that it is counter intuitive to the principle of information sharing leading to the detection and prevention of theft across the industry as a whole. Should a supplier discover theft occurring at a property not on their portfolio,, for example in a block of residential flats, there is a disincentive to share this information it will have a detrimental impact on their own performance relative to the other supplier. However where a health and safety risk was present we would expect this to be take precedence over any commercial gain, but our concern is that the scheme's set up may prevent this approach.

It should be considered whether the ultimate aim of any successful proposal is the detection of theft on an ongoing basis, or the detection of theft with the ultimate aim of its prevention. Only the NRPS will ensure that all suppliers work towards a common goal and be more effective at preventing theft in the long term. The SETs schemes will instead pitch Suppliers against one another, despite there being a clear need to ensure that safety and security of the network take priority. Under the NRPS as suppliers are not competing against one another for a share of revenue, there is no disincentive to share information across the industry for the combined aim of preventing theft. This shared information can then be used to identify potential trends or geographical areas where theft is more prevalent. This will increase the level of confirmed theft and reduce any potential health and safety risk by detecting theft sooner than would have been done by a supplier acting alone.

By sharing information across supplier boundaries, there is also no possibility for those committing theft to frustrate a supplier's investigation by switching to a one who may be underperforming under SETS. We also believe that this would deliver benefits to the AUGE.

References

1. Page 2, UNC modification 0277
2. Joint ERA/ENA report, "Report of the Theft Of Energy Working Groups" (April 2006)
3. AUGE, "Allocation of Unidentified Gas Statement – Draft v2", (September 2011)
4. AUGE, "AUGS Communications Index and Reference Documents" (June 2011)

Question 10: Do you consider that there are any alternative proposals, or variations on existing proposals to improve theft detection that should be considered?

Ofgem have expressed their intention to act on the issue of theft of energy. ScottishPower whole-heartily agrees with the principles that theft of gas is dangerous and poses a real risk to the health and safety of consumers and to those associated with the gas network. Theft currently costs all domestic customers money (and we note this will extend to LSPs under the AUGE proposals) and where energy is stolen, it is often used inefficiently. This also impacts the government and industry's wider goals around energy efficiency and combating climate change. The proposals suggested, and any alternative, must however be proportionate to the scale of the issue.

Some suppliers may already have well established arrangements for managing the risk of theft on their portfolio. These arrangements are likely to be performing some of the actions that the NRPS proposes to do so it would seem inefficient that a supplier is required to invest in these for a second time. We believe though that the information sharing principle of the NRPS is a key factor that will increase the volume of theft detected and prevented. We would suggest therefore an alternative where the number of 'core' services is reduced to the sharing of information only but with the other services still being available to suppliers on a commercial basis. This would continue to give the benefits of sharing information across the industry, provide smaller suppliers with the benefits of a

central service provider, and avoid the risk of suppliers with more established revenue protection arrangements incurring further unnecessary charges.

The proposals do not set out further obligations on the transporters and we consider that they have an important part in theft detection. There may be potential for exploring a shrinkage influenced mechanism, similar to the losses mechanism employed on electricity distribution networks. This could incentivise gas transporters to take a more proactive role in detecting and preventing theft, and by doing so, further increase the proportion of theft detected and stopped.

We also note the moves to smart and Automatic Meter Reading (AMR) metering will provide suppliers with increased visibility of consumption and profiles for all supply points registered to them. This additional information will aid in identifying abnormal consumption patterns and therefore any suspected cases of meter tampering.

These points should therefore be taken into consideration when assessing the most appropriate scheme to deploy, as the costs that will be placed on suppliers currently in the market, as well as those who may enter in the future. There may not be an enduring need for a centralised theft process due to suppliers having greater visibility of energy usage and an understanding by consumers that Suppliers have that visibility. In addition if the costs are prohibitive then this may deter market entry and ultimately customer choice.

DRAFT IMPACT ASSESSMENT CHAPTER: Two

IA Question 1: What do you consider to be the scale of theft in the GB gas market? Do you consider that there is a material difference in the prevalence of gas theft between suppliers' customer portfolios? What factors drive any considered difference in theft distribution?

We believe that the prevalence of gas does vary materially between suppliers' portfolios and this variance is caused by a number of factors. The ERA/ENA working group report (2006) concluded that theft was affected by geographical location and a supplier who focussed on rural customers would be unfairly impacted by a penalty based scheme that assumed a uniform spread across the UK. This view is supported by the recent occurrence of prepayment key meter fraud where the ten post codes where fraud was most prevalent were found in London, Birmingham, Manchester, Liverpool, and Glasgow. Furthermore, while theft can still occur at an LSP site, these sites are traditionally more closely monitored and theft would be identified sooner. As with the supplier above, an I&C only supplier may also be unfairly impacted by applying an arbitrary target.

IA Question 2: Where theft has been detected, how long on average would you expect future revenues from a customer to fully reflect their consumption, ie what is the expected reoffending rate over time. Do you expect there to be a material difference under each of the three proposals?

Under SETS, theft detected by a supplier will count towards their performance for the year. This could include second or further thefts which were committed by previous offenders. This may provide a disincentive to a supplier to take full measures to prevent future theft as they know future detections of theft will aid their performance against other suppliers. Customers who commit theft and are detected may also choose to switch supplier with the aim that the new supplier will not have knowledge of past offences and there will be less focus on monitoring that supply point. Suppliers under the pure SETS proposal have no commercial incentive to share this information with other suppliers so there are no means of quickly identifying the risk of theft occurring with the new supplier. In contrast, the NRPS and Enhanced SETS will share this information on change of supplier and therefore reduce the potential for a future offence.

A material difference could be made to theft overall if the judiciary were made more aware of theft and the difficulties of the revenue protection activities around it. In particular, Suppliers experience difficulties in obtaining warrants and managing the resources that are required for such work. This is even more of an issue for smaller suppliers. A NRPS providing nominated services can therefore provide these services and remove some of the burden from suppliers. This would further remove some of the difficulties experienced in investigating theft.

IA Question 3: For each industry proposal, are the proposed compliance measures sufficient to ensure suppliers conduct investigations to satisfactory standards and thereby protect customer interests? Are there any further measures that should be introduced to help address any perceived weakness?

The NRPS proposes sufficient audit procedures to ensure that a satisfactory level of performance is achieved by both suppliers and the NRPS provider. By its nature the NRPS will ensure that the performance is consistent across the industry.

Both SETS schemes also propose means for supplier performance to be reviewed against a code of practice.

Suppliers must also meet the requirements of their licence conditions and would be subject to investigation by Ofgem if this was felt not to be the case. We consider that these are sufficient measures to ensure compliance.

DRAFT IMPACT ASSESSMENT CHAPTER: Three

IA Question 4: Are there any material differences between suppliers' ability to compete for incentive payments between UNC277 and UNC346? Would Enhanced SETS address any potential concerns raised about suppliers' ability to compete?

Under UNC346 Ofgem's impact assessment describes a significant difference in the incentive payments for detecting theft in the SSP and LSP markets. We previously described the potential for more aggressive behaviour by suppliers where there is an opportunity for commercial gain. A supplier operating in both markets may therefore have the perverse incentive to target the LSP market more heavily than the SSP. We believe that a consistent approach should be taken towards theft and it would be wrong to target one sector as it had more potential gain.

Enhanced SETS will provide common revenue protections services that may not be as readily available to smaller supplier operating on their own. This will allow suppliers to compete under the SETS scheme on a more equitable basis. However there is no requirement for any supplier to use the CRPU and we would question the value of investing the establishment of a new organisation with no guaranteed customers. We note that the same issues over the setting of targets and introducing competition to the detection of theft also apply under Enhanced SETS.

IA Question 5: Do you consider that the current NRPS proposal is likely to establish and realise targets for theft detection that are proportionate to the potential customer benefits? If not, what additional measures do you think are needed to meet this aim?

We believe that the NRPS is likely to reach the targets set for it. We have described in Question 10 a streamlined version of the NRPS which would allow the service to be provided at a lower cost to those suppliers who already have established revenue protection processes in place.

Rather than using a fixed target for the NRPS, the commercial arrangements under which it is provided may allow for the service provider to be incentivised to investigate more cases of theft. A “cap and collar” mechanism could therefore be employed to reward performance while encouraging improvement where required.

IA Question 6: Would the NRPS prevent some suppliers from realising additional commercial benefits from theft detection that may be available to them, eg by going further than the NRPS mandated investigation requirements? Would the focus of the NRPS proposals on data analysis reduce the overall efficiency of the market in theft detection by excluding investment in other sources of detection?

ScottishPower considers that theft of gas poses a real and serious risk to the health, safety, and security of customers, those parties working directly on the gas network, and other associated parties. The primary aim of any solution should be the increased detection and prevention of theft and the reduction of such risks. The proposals should all be seeking to address this aim and ensuring health and safety issues are minimised and not be about commercial gain for Suppliers. In addition the service offered for the detection of theft should be done as efficiently and cost effectively as possible to ensure that costs to all consumers are minimised.

There are no restrictions on suppliers to go over and above investigating the leads generated by the NRPS. Suppliers would be free to do so and feed this information back to the NRPS providing further intelligence that can be used to improve detections elsewhere and drive efficiencies in the process. The supplier will therefore receive a “benefit” (or in effect, a reduced risk) in that further revenue being lost through theft is detected and recovered.

The NRPS will be provided through commercial competitive arrangements tendered for at 5 year intervals. There will also be auditing completed on both supplier and NRPS agent performance. Such arrangements will ensure that the incumbent NRPS provider is operating in the most effective and efficient manner.

IA Question 7: For each of the three industry proposals, is a scheme necessary to compensate a supplier when it is not able to recover its costs from theft?

It is right that suppliers should be able to recover the costs incurred as a result of theft. Without such a scheme a supplier may be dis-incentivised to use its full resources to investigate theft. This may be felt more extremely by smaller or new market participants. Such a scheme however should be straight forward and be simple for suppliers to use. From our own experience as a supplier this is not the case. We would suggest that the existing arrangements around reasonable endeavours are reviewed and improved where possible.

IA Question 8: Do you consider that cost and availability of services to support theft detection and investigation is a material issue for small suppliers?

We feel that the cost and availability of services to support theft detection and investigation is a material issue for all suppliers and such factors may be felt more extremely by small suppliers. The cost of revenue protection, which should not be limited to only that of investigation, is a key driver behind whether a supplier is able to go beyond its requirements under the licence.

Under SETS a supplier may choose to review the cost of meeting their target against what is required to do the minimum under their licence obligations. While we would expect suppliers to do all within their power to detect and prevent theft on their portfolio, the cost of doing so may be greater than the penalty for not meeting their target under SETS. Indeed a smaller supplier, due to careful management of their portfolio, may already be

less susceptible to theft and incur a double cost of sourcing a revenue protection service provider and still not meeting their target as theft was simply not there to be found. Conversely, the NRPS provides for national service where costs are smeared across all suppliers. This would be expected to provide an economy of scale that could not be obtained by a small supplier operating on their own. This removes any disincentive for the supplier not to go above and beyond their requirements and will further increase theft detection.

DRAFT IMPACT ASSESSMENT CHAPTER: Four

IA Question 9: What percentage reduction in consumption would you expect customers to make when an illegal gas supply is detected? To what extent do you consider that this would result from a response to increased costs and/or an increased propensity to invest in energy efficiency measures?

An outcome of theft occurring is that the supplier is unlikely to have been able to obtain a meter reading and ensured that the Annual Quantity (AQ) is accurate. It is therefore difficult to accurately estimate what the change in consumption is following detection. Customers who are stealing gas do not do so in an energy efficient way so it would seem unlikely that this would be a key concern following detection. It would follow that the key driver in any change in consumption would therefore be in response to increased costs.

DRAFT IMPACT ASSESSMENT CHAPTER: Five

IA Question 10: Do you have any further information on safety incidents where harm has directly resulted from theft of gas.

We do not have any further information on incidents where harm has directly resulted from the theft of gas. Gas transporters are responsible for responding to escapes.

IA Question 11: Do you consider that any of the proposals are likely to reduce the health and safety of any particular individuals?

The SETS proposals do not encourage information sharing as a supplier's performance may be affected relative to the rest of the industry. Where a supplier or their agent suspects theft is occurring at site not on their own portfolio this may not be passed on to the relevant supplier. Any delay in the detection and prevention of theft may result in a potential health and safety risk to the public and those associated with the network.

IA Question 12: Which proposal do you consider will have the greatest overall benefit on health and safety?

The principal aim of any proposal should be to reduce exposure to any risks to health, safety, or security in as cost efficient and effective manner as possible. This is against the SETS proposal which has the perverse incentive that a supplier may be penalised if they shared information about suspected theft.

The back office, data analysis and reporting, as well as the intelligence and data gathering proposed under the NRPS model is likely to improve health and safety by ensuring that the industry has a coordinated view of the scale, trends, and geographical specifics of theft. In particular this could be shared with the HSE and work could be done amongst suppliers, possibly on an annual basis, to agree the picture and identify possible improvements in theft detection and investigations. The SETS proposals as described would not encourage such a knowledge sharing exercise. There is also a risk under SETS that suppliers may withhold information for commercial gain without being aware of issues being experienced by other suppliers.

We would stress again that the priority should be the safety and security of supply and that investigations are carried out in an efficient and cost effective manner as soon as possible.

DRAFT IMPACT ASSESSMENT CHAPTER: Seven

IA Question 13: Do you consider that the proposed implementation timescales for each proposal are realistic and achievable. If not, what do you consider to be a realistic timeframe? What additional measures, if any, do you consider should be undertaken to secure implementation within a reasonable timeframe?

The proposed implementation timescales for each of the proposals are challenging. It is more important though that the solution is the most robust, rather than the quickest. The NRPS proposal is dependent upon a decision from Ofgem on I&C supplier accession to SPAA. Any delay in this would impact the ability to introduce the required governance arrangements and to identify a service provider.

Enhanced SETS suggests that it could be implemented in a phased approach. As the CRPU and RPACA are envisaged as being used to aid small suppliers who may not have dedicated revenue protection teams, or who can achieve the economies of scale that larger suppliers can, this will place them at a disadvantage until they are developed. We do not agree therefore that this scheme can therefore be implemented shortly after Ofgem's decision.

IA Question 14: Do you consider that gas transporters should be required to adhere to a code of practice on the conduct of theft investigations?

ScottishPower believes that the gas transporters have a key role to play in ensuring the safety and security of the gas network. As theft is a significant risk to this the involvement of the gas transporters is essential. A code of practice will ensure a consistent approach from all transporters and allow all parties affected by theft to know exactly what to expect and where the differing responsibilities lie. This would achieve the most benefit where it was introduced in line with a similarly consistent approach from suppliers (i.e. the NRPS).

IA Question 15: What impact will either of the three industry proposals have on the annual number of investigations of theft in conveyance that gas transporters undertake and the total cost of undertaking these?

All proposals will result in an increased focus on theft. It is reasonable therefore to assume that this increase will result in an increase in the number of cases of theft in conveyance also being investigated. We do not believe that any one proposal will have a material difference over another but the NRPS could result in shared information and economies of scale that allow such notifications to be made to the transporters more efficiently and cost effectively. Such information could also be shared with the HSE and relevant parties to see what further benefits could be achieved.

IA Question 16: What, if any, changes to the regulatory arrangements need to be made to enable gas transporters to adhere fully to their requirements to conduct theft investigations?

The NRPS will bring about benefits in theft detection by sharing knowledge across suppliers and doing so in a manner that is consistent across all suppliers despite which is directly impacted by the theft. This would benefit further from greater visibility over what the gas transporters are doing to detect and prevent theft on their networks. Such information could be provided on a regular basis split, for example, by LDZ and could be used by the NRPS to further identify cases of theft and making the industry solution more encompassing.

We have also described above the consideration of losses-style mechanism for gas transporters and reasonable endeavours. Under current arrangements there is no way for the transporters to recover the costs incurred through theft. This could be investigated further to allow this to happen and remove any disincentives for them not to do so.

ScottishPower
October 2011

Annex 2 - Theft of Gas – draft Licence Condition

Objective of the Condition - Paragraph 1.1 – Paragraph 1.3

We do not think that an Objective is necessary for this Condition, given the policy intention. We are also concerned that the Objective as drafted does not complement the substance of the Condition. In fact, we are concerned that the Objective only serves to duplicate the key aspects of the Condition and then create greater regulatory uncertainty for suppliers by suggesting that, even though the Objective duplicates most of the obligations, these obligations might not go far enough to achieve compliance. In the current enforcement regime, such an approach is unbalanced and inappropriate.

The current statutory framework is designed solely on the basis of a rules-based regulation system and therefore we strongly believe that it is not appropriate or suitable for the principles-based 'Objectives' to be introduced in to new Licence Conditions. We recognise that this already exists in relation to one Condition, however we consider this to be an exception due to the nature of that Condition, rather than the rule. Particularly, the current rules-based framework gives Ofgem a unilateral right to make decisions based on consideration of the breach of specific Licence rules, with a limited right of appeal for licensed parties. The discretionary level of interpretation associated with an 'Objective' is not at all suited to this structure. For such a significant step change in the operation of the market, there would need a full debate and review of the overall design of the Licence regime. We would be pleased to be involved in such a debate but do not think that we have explored the implications of such a regime fully as yet.

In particular, placing a general obligation on suppliers to detect and prevent theft of gas suggests that suppliers should be doing this in relation to any premises. However, paragraph 1.4 specifically requires that this is not the case. It is not clear how suppliers can therefore fulfil the objective beyond the obligations set out in the Licence Condition. This is not a suitable mechanism within the current Licence and enforcement regime and therefore should be removed.

To that end we think that Paragraph 1.1 needs to be amended, as illustrated in the attached Annex, and Paragraphs 1.2 and 1.3 deleted.

Paragraph 1.1b

There will be a Code of Practice established under SPAA, which will be designed to achieve the new relevant objective in Condition 30.6(e). This Code of Practice will govern the customer experience of any activity connected with supplier detection, prevention or investigation of the Theft of Gas, and will cover the matters set out in the proposed paragraph 1.1(b). As the Code will be a mandatory requirement under SPAA, it is not appropriate for this also to be a requirement in the Licence Condition.

We are also concerned that these requirements may be difficult to interpret, especially in cases where our Representative may be threatened.

Paragraph 1.3

It is not appropriate to link compliance with other existing Licence Conditions within this Licence Condition. Licence Conditions under the current enforcement regime should be clear, specific and allow suppliers to be confident in their ability to comply with these. They should also not create any unnecessary duplication. The current draft 1.3 conflicts with this and creates a circular compliance requirement which is inappropriate.

Paragraph 1.5 and 1.6

We think that Paragraphs 1.5 and 1.6 seem to duplicate the requirement in paragraph 1.1 and, while we do not have concerns with the nature of these obligations in general, we believe that any duplication should be removed.

Paragraph 1.8

As we do not think that there is scope for an Objective in this Condition, for reasons outlined above, we think that the words “give effect to the Objective” should be replaced with “detect and prevent theft”.

Paragraph 1.9

The current draft of Paragraph 1.9 seems to conflict with Paragraph 1.8, as it links the implementation of the Theft Arrangement to the introduction of the Condition, rather than the direction from the Authority, as required in Paragraph 1.8. We think it would be more appropriate to require the Theft Arrangement to be implemented within X months of the direction from the Authority, or the Condition going live, whichever is the later.

Paragraph 1.12

We think that much of Paragraph 1.12 duplicates either existing obligations or obligations that will form part of the Code of Practice on Theft of Gas that will be developed under SPAA. Therefore, we have suggested drafting changes to resolve this.

Paragraph 1.12(c)

The restriction on disconnection should be subject to there being an alternative that would safely and effectively remedy the matter. This could be achieved by inserting after from “Representatives must” in line 3 some such words as “, if there is an alternative course of action which in the licensee’s reasonable opinion would effectively and safely prevent the theft and facilitate recovery of the lost revenue,”.

Paragraph 1.12(d)

We do not think it appropriate to require the Licensee to respond to an offence of Theft of Gas by fitting a Prepayment Meter, unless this would safely and effectively remedy the matter. We also do not understand what is meant by “facilitate” in this context – it seems to imply additional tasks being undertaken at the licensee’s expense. We would suggest in line 5 after “the representative must” inserting some such words as “if in the licensee’s reasonable opinion it would effectively and safely prevent the theft and facilitate recovery of the lost revenue”. We would also delete “and facilitate” in the next following line.

Paragraph 1.12(e) and (f)

The offences which give rise to the Statutory Disconnection Power in relation to Paragraph (e) already imply that a suitable burden of proof on the Licensee exists and is necessary to allow the Statutory Disconnection Power to be exercised. This is the level of proof that would be required to allow a Licensee to rely on a summary offence having been committed. To the same end, before a supplier could make claim that Charges were due, it would require to have sufficient evidence to suggest that Charges are due as a summary offence has been committed. Therefore, Paragraphs 1.12 (e) and (f) are not necessary and should be deleted.

Paragraph 1.12(g)

As noted above, the Code of Practice on Theft of Gas which is being developed under SPAA, and which will form part of the relevant objectives in Condition 30.6, will cover much of the customer experience in relation to activities to detect, prevent and investigate

the Theft of Gas. To that end, it is inappropriate to duplicate these obligations in the Licence Condition and create a duplicate governance regime on these requirements.

Paragraph 1.13

Paragraph 1.13 is by its nature unnecessary, as it will be a feature of any Licence Condition that a supplier will be required to keep records to demonstrate compliance with its obligations. If a specific record-keeping obligation is required, this should be specific as to what records Ofgem would expect to see kept in relation to this Condition.

ScottishPower
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Draft Theft
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